

SECTION ____. G.S. 55-1-40(13a) reads as rewritten:

"(13a) ~~An item is "mailed" when it is deposited~~ "Mail," when used as a verb, means to deposit in the United States mail with postage thereon prepaid and correctly addressed. When a corporation mails an item to a shareholder, "correctly addressed" means addressed to the shareholder's address as shown in the corporation's current record of shareholders."

Explanation: amendment fixes format of definition to match rest of section.

§ 55-1-40. Chapter definitions.

In this Chapter unless otherwise specifically provided:

- (1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.
- (2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.
- (2a) "Business entity," as used in G.S. 55-11-10 and Article 11A of this Chapter, means a domestic corporation (including a professional corporation as defined in G.S. 55B-2), a foreign corporation, a domestic or foreign nonprofit corporation, a domestic or foreign limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36 whether or not formed under the laws of this State.
- (3) "Conspicuous" means so written that a reasonable person against whom the writing is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.
- (4) "Corporation" or "domestic corporation" means a corporation for profit or a corporation having capital stock that is incorporated under or subject to the provisions of this Chapter and that is not a foreign corporation except that in G.S. 55-9-01 and G.S. 55-15-21 "corporation" includes domestic and foreign corporations.
- (5) "Deliver" includes mail.
- (6) "Distribution" means a direct or indirect transfer of money or other property (except its own shares) or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect of any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.
- (6a) "Dividend credit" as used in G.S. 55-6-01(d)(5) means the aggregate of all yearly dividend credits. "Yearly dividend credit" means with respect to noncumulative preferred shares, the amount by which the full dividend preference of such a share, to the extent that such preference is earned by the corporation with respect to such a share in a particular fiscal year, exceeds the dividends paid on said share for that year; provided, that no dividend credit shall accrue unless, and only to the extent that, there exists an earned surplus at the end of such fiscal year. Computations of earnings allocable to classes of

shares made in good faith by the board of directors in accordance with generally accepted accounting principles shall be conclusive. For the purpose of this definition, a dividend is deemed paid if it has been declared and funds for its payment have been set aside.

- (6b) "Domestic limited liability company" has the same meaning as the term "LLC" in G.S. 57D-1-03.
- (6c) "Domestic limited partnership" has the same meaning as in G.S. 59-102.
- (6d) "Domestic nonprofit corporation" means a corporation as defined in G.S. 55A-1-40.
- (7) "Effective date of notice" is defined in G.S. 55-1-41.
- (8) "Electronic" has the same meaning as in G.S. 66-312.
- (8a) "Electronic record" has the same meaning as in G.S. 66-312.
- (8b) "Electronic signature" has the same meaning as in G.S. 66-312.
- (9) "Entity" includes (without limiting the meaning of such term in Article 9 of this Chapter):
 - a. Any domestic or foreign:
 - 1. Corporation; nonprofit corporation; professional corporation;
 - 2. Limited liability company;
 - 3. Profit and nonprofit unincorporated association; and
 - 4. Business trust, estate, partnership, trust;
 - b. Two or more persons having a joint or common economic interest; and
 - c. The United States, and any state and foreign government.
- (10) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this State.
- (10a) "Foreign limited liability company" has the same meaning as the term "foreign LLC" in G.S. 57D-1-03.
- (10b) "Foreign limited partnership" has the same meaning as in G.S. 59-102.
- (10c) "Foreign nonprofit corporation" means a foreign corporation as defined in G.S. 55A-1-40.
- (11) "Governmental subdivision" includes authority, county, district, and municipality.
- (12) "Includes" means a partial definition.
- (13) "Individual" denotes a natural person legally competent to act and also includes the estate of an incompetent or deceased individual.
- (13a) An item is "mailed" when it is deposited in the United States mail with postage thereon prepaid and correctly addressed. When a corporation mails an item to a shareholder, "correctly addressed" means addressed to the shareholder's address as shown in the corporation's current record of shareholders.
- (14) "Means" denotes an exhaustive definition.
- (14a) "Merger" as used in Article 9 includes a "share exchange" as used in Article 11.
- (15) "Notice" includes demand and is defined in G.S. 55-1-41.
- (16) "Person" includes individual and entity.
- (17) "Principal office" means the office (in or out of this State) where the principal executive offices of a domestic or foreign corporation are located, as

designated in its most recent annual report filed with the Secretary of State or, in the case of a domestic or foreign corporation that has not yet filed an annual report, in its articles of incorporation or application for a certificate of authority, respectively.

- (18) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.
- (18a) "Public corporation" means any corporation that has a class of shares registered under Section 12 of the Securities Exchange Act of 1934, as amended (15 U.S.C. § 78l).
- (19) "Record date" means the date established under Article 6 or 7 on which a corporation determines the identity of its shareholders for purposes of this Chapter.
- (20) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under G.S. 55-8-40(c) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.
- (21) "Shares" means the units into which the proprietary interests in a corporation are divided.
- (22) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.
- (23) "State", when referring to a part of the United States, includes a state and commonwealth (and their agencies and governmental subdivisions) and a territory and insular possession (and their agencies and governmental subdivisions) of the United States.
- (24) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.
- (24a) "Unincorporated entity" means a domestic or foreign limited liability company, a domestic or foreign limited partnership, a registered limited liability partnership or foreign limited liability partnership as defined in G.S. 59-32, or any other partnership as defined in G.S. 59-36, whether or not formed under the laws of this State.
- (25) "United States" includes district, authority, bureau, commission, department, and any other agency of the United States.
- (26) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this Chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this Chapter to vote generally on the matter are for that purpose a single voting group. (1955, c. 1371, s. 1; 1959, c. 1316, s. 1; **1989, c. 265, s. 1**; 1989 (Reg. Sess., 1990), c. 1024, s. 12.4; 1993, c. 552, s. 4; 1999-369, ss. 1.2, 1.3; 1999-456, s. 3; 2001-358, s. 5(a); 2001-387, ss. 3, 4, 5, 173, 175(a); 2001-413, s. 6; 2001-487, s. 62(a); 2013-157, s. 3.)

AMENDED NORTH CAROLINA COMMENTARY

This section defines more terms than were defined in former G.S. 55-2 and in some cases the definitions are different. The following differences should be noted:

(i) For the sake of uniformity with other states, this Act does not use the term "charter," but instead defines "articles of incorporation" to include all amendments.

(ii) This section does not contain general definitions of the terms "assets," "dominant shareholder," "liabilities," "net assets," or "preferred share," as did prior law, because such terms have no special significance in the Model Act.

This section differs from the Model Act in certain respects:

(i) The phrase "unless otherwise specifically provided" was added to the introduction to allow for different definitions in Article 9.

(ii) Except for the final clause thereof, the definition of "corporation" was brought forward with minor modifications from prior law. The final clause, relating to the use of the term "corporation" in G.S. 55-9-01, was considered necessary because that section, which was brought forward from prior law, uses the term "corporation" in certain cases to refer to any corporation, foreign or domestic. In the remainder of Article 9, the term "corporation" refers to domestic corporations only.

(iii) The definition of "dividend credit" was brought forward with minor modifications from prior law.

(iv) The Model Act's definition of "employee" was deleted as unnecessary and undesirable.

(v) The Model Act's definition of "entity" was expanded to include professional corporations.

(vi) "Means" was substituted for "denotes" in the definition of "includes."

(vii) The definition of "individual" was expanded.

➡ (viii) Definitions were included for "mail" and "merger" to clarify possible confusion in the use of those terms.

(ix) "Notice" was defined to include "demand."

(x) A definition of "public corporation" was added for ease of reference in those provisions of the Act that are applicable only to corporations having a class of shares registered under the Securities Exchange Act of 1934.

The Model Act uses the term "not-for-profit corporation" rather than the term "nonprofit corporation," which is used in this Act. The terms "not-for-profit corporation" and "nonprofit corporation" are interchangeable in Chapter 55A. "Non-profit corporation" and "nonprofit association" were therefore used throughout this Act.

Cross References. - As to the North Carolina Limited Liability Company Act, see G.S. 57D-1-01.